1. S.B. CIVIL WRIT PETITION NO.4773/2004
Heera Lal vs. Rent Tribunal, Bikaner and others.

2. S.B. CIVIL WRIT PETITION NO.4774/2004
Heera Lal vs. Rent Tribunal, Bikaner and others.

Date : 14.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the petitioner.

Mr. SN Trivedi, for the respondent no.3.

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Heard learned counsel for the parties.

REPORTABLE

Brief facts of the case are that the plaintiff/ respondent no.3 filed a suit for eviction of his tenant-petitioner under Section 9(i) and 10(c) of the Rajasthan Rent Control Act, 2001 (in short “the Act of 2001”) alleging that the plaintiff is in need of the suit premises and since he is a senior citizen, therefore also, he is entitled for immediate possession of the suit premises under Section 10(c). In addition to above, the plaintiff sought eviction of tenant on the ground as provided under Section 10(3) which provides for eviction of tenant in case, the landlord has incurred any permanent disability due to which he cannot use staircase and requires ground floor premises for his own residence. The trial court passed the decree for eviction of the tenant on the ground of personal need of landlord under Section 9(i) and refused relief for immediate possession under Section 10(c) and 10 (3) of the Act of 2001. The petitioner's appeal against

eviction decree was dismissed by the appellate court.

The petitioner tenant is aggrieved against the judgment and decrees passed by the two courts below for eviction from the two premises and, therefore, preferred these two writ petitions.

The facts of both the cases are same in as much as the cause of action for filing two eviction petitions against one tenant by same landlord is personal bonafide necessity of landlord for both the premises as mentioned above.

According to learned counsel for the petitioner, the plaintiff miserably failed to establish any of the grounds for eviction and according to learned counsel for the petitioner, it is clear from the specific provision provided under the Act of 2001 that the landlord can recover immediate possession in the contingencies as enumerated in the clauses made under Section 10 of the Act of 2001.

According to learned counsel for the petitioner, the petitioner though pleaded that he is a senior citizen and he incurred disability and due to that he is unable to use the staircase, therefore, he is entitled for possession of the rented premises under Section 10(c) as well as Section 10(3) of the Act of 2001. Since the plea taken by the plaintiff was not found proved by the two courts below, therefore, the courts should not have passed the decree under Section 9(i) of the Act of 2001.

According to learned counsel for the petitioner, when there is a specific provision available for seeking relief

then unless a case is proved under those very provisions, the landlord cannot get relief under the other provisions of law.

According to learned counsel for the petitioner, so far as reasonable bonafide necessity of the landlord is concerned, the plaintiff failed to prove the reasonable bonafide necessity. It is also submitted that in view of the findings of two courts below about physical condition of the plaintiff, it is clear that the plaintiff was not a disabled person. Contrary to it the two courts held that the plaintiff is an advocate and appearing in the courts in the ground floor as well as upper floor. It is also submitted that the plaintiff is an old political leader and the need has not developed now. Learned counsel for the petitioner relied upon two judgments of Hon'ble Supreme Court in support of his arguments that mere desire of the landlord is not sufficient for possession of the rented premises but the desire must be reasonable bonafide. The judgments are :-

1. (1999) 1 SCC 439 – M.S. Zahed vs. K.Raghavan.
2. (2001) 5 SCC 705 – Deena Nath vs. Pooran Lal.

It is also submitted that in case there is hardship, then the High Court can certainly interfere by exercising power under Article 227 of the Constitution of India and grant the relief to the aggrieved party.

I have considered the submission of learned counsel for the petitioner and the respondent no.3.

It is clear that the plaintiff pleaded that he is an old man of 72 years, therefore, he is a senior citizen. Therefore, he was eligible for seeking immediate recovery of rented premises under Section 10 of the Act of 2001 on proving other facts. The plaintiff claimed that he is suffering from pain in knee and also suffering from Asthmatic disease. He further pleaded that the petitioner's brother with his family is also residing with the plaintiff. The residence of the plaintiff is on the upper floor of the premises in dispute. He is feeling difficulty in using stairs. The plaintiff further pleaded that he is a political worker also and he was MLA and remained Minister. For his political activities, he needs a proper place so that he may meet with his workers. The plaintiff in his affidavit (copy of which is placed on record as Annex.2) stated on oath about all the facts which he pleaded in the plaint. The plaintiff was cross examined by the defendant. The plaintiff also produced one more witness P.W.2 Nisar who also supported the stand of the plaintiff. The plaintiff produced some documents and the defendant gave his own statement by filing affidavit before the trial court and produced document Exhibit-A/1.

It appears from the reasons given by the two courts below that the two courts considered the facts in detail and after appreciation of the evidence held that the plaintiff failed to prove any ground for immediate eviction of his tenant under Section 10 of the Act of 2001 but he proved his case under Section 9(i), i.e., on the ground of

his personal need. This finding against the tenant is under challenge in this writ petition.

So far as contention of learned counsel for the petitioner that the eviction decree has been passed without any evidence. This Court finds after going through the evidence on record that the evidence of the plaintiff and his witness about the need of the plaintiff is very much there. Not only this, these evidence as well as evidence of the defendant tenant were considered by the courts below carefully. It is neither a case of no evidence nor it can be said that the finding of fact recorded by the two courts below vitiated because of any reason.

The petitioner's case that since the plaintiff failed to prove his case under Section 10(3), therefore, all the grounds which have been raised by the plaintiff for his personal bonafide necessity stand falsified or the court could not have decreed the suit of the plaintiff after rejecting the plaintiff's plea as raised in Section 10(3).

Section 9(i) is an independent and a separate ground for eviction of tenant and it provides that any landlord can file any petition for recovery of possession from his tenant on the ground that the premises are required reasonably and bonafidely for the landlord himself or for his family.

Section 10(3) is only an additional provision which

gives some more benefits to the senior citizen and in that case, a specific ground has been provided that on proving that landlord is a senior citizen and he has permanent disability due to which he is unable to use staircase and requires the ground floor premises for his own residence he becomes entitled to claim immediate possession of the rented premises. These two provisions can survive together and there is no conflict between them. Sometimes, there may be some confusion because of the common evidence for proving two facts or grounds. Here in this case, the petitioner who is aged 72 years, could have pleaded his age for getting relief under Section 10(c) but that doesn't mean that, that fact of his age cannot be a ground for assessing reasonable and bonafide necessity of the landlord independently in case his case is not made out under Section 10(c). In the same manner, if a person is senior citizen and has disability and that disability is not found to be of permanent nature and therefore, the landlord may not be entitled to relief under Section 10 of the Act of 2001 but such disability may be relevant fact which can be considered by the Court while assessing the reasonable and bonafide need of the landlord under Section 9(i) which depends upon the facts of each case. The grounds which can be raised under Section 9(i) are not expressly or by implication have been excluded by Section 10(c) or Section 10(3) of the Act of 2001, therefore, I do not find any merit in the submission of learned counsel for the petitioner that since the landlord failed in proving his case under the provisions of Section 10, therefore, his

case under the provisions of Section 9(i) cannot stand.

So far as need and its extent is concerned, it is a pure question of fact and looking to the facts of the case, this Court is not inclined to re-assess the reasonable and bonafide need of the landlord when two courts below have recorded a finding of fact that the landlord is aged 72 years and is a political worker and is seeking eviction of his tenant from the ground floor on the ground so that to have proper interaction with his workers.

In view of the above, these two writ petitions, having no merit, are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya